IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 27, Original

STATE OF OHIO.....*Plaintiff*

vs.

STATE OF KENTUCKY.....*Defendant*

ANSWER

COMES NOW, the Commonwealth of Kentucky by and through its Attorney General and answers the complaint in this action by stating that Defendant:

1. Admits the allegations in paragraphs 1 through 7 and 14 of the complaint.

2. Admits the allegations in paragraph 8 of the complaint, but denies that the low water mark line established by the survey of 1896-1906 is the same as or an approximation of the 1792 low water mark or that it constitutes evidence of the location of the 1792 low water mark.

3. Admits the allegation in paragraph 9 that the original dams and the new dams caused the waters of the Ohio River to rise and admits that in some places along the river the effect of this may have been to cover portions of the northerly shore, but Defendant does not have sufficient knowledge or informa-

tion to form a belief as to the extent of any such inundation and denies that the dams caused the shores or banks of the river to be moved further northerly to any appreciable extent, and denies that any such effect was manifested at all places along the river between the State of Ohio and Kentucky.

4. Admits that the 1792 north low water mark has been obscured, and no one knows or can ascertain by any means where the line would run today, but denies that this situation was caused by and has existed only since the increase in elevation of the water levels due to erection of dams from 1910 to date.

5. Admits the allegation in paragraph 11 that Kentucky has claimed in the past, and now claims, that the boundary line between it and the State of Ohio is the low water mark on the present northerly shore of the Ohio River, it being impossible to determine where the 1792 low water mark line is located, and Defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegation that the 1792 northerly low water mark is located to the south of the low water mark on the present north shore.

6. Denies that Kentucky claims exclusive jurisdiction to the entire Ohio River.

7. Does not have sufficient knowledge or information to form a belief as to the truth of the allegation in paragraph 13 that the State of Ohio "has always claimed" that the boundary between it and Kentucky is the 1792 northerly low water mark, but denies that Plaintiff has ever heretofore asserted by proper proceedings that the 1792 south low water mark differs from the low water mark on the northerly shore and that Kentucky was exercising jurisdiction over territory deemed to be in the State of Ohio.

8. Admits that the State of Ohio has "concurrent jurisdiction" with Kentucky over the Ohio River.

FIRST DEFENSE

The low water mark on the present northerly shore of the Ohio River must continue to be considered the boundary line between the State of Ohio and the Commonwealth of Kentucky since the location of the 1792 low water mark is not known and cannot be ascertained, and surveys made over a century later are not probative evidence of the location of the 1792 line; citizens and law enforcement officials of both states would only be confused and misled to their detriment by relocation of the boundary somewhere farther out in the river on an unmarked line, whether slightly south of the bank or perhaps nearing in a few places the middle of the stream, and the sensible and practical approach is to regard the low water mark on the northerly shore as the boundary.

SECOND DEFENSE

The State of Ohio has acquiesced in the claim of Kentucky that the boundary between the states is the low water mark on the present northerly shore of the Ohio River, and has acquiesced in the exercise of jurisdiction by Kentucky pursuant to said claim, and Plaintiff is estopped from asserting that the boundary is otherwise located.

THIRD DEFENSE

The complaint does not set forth or attempt to describe any particular tract of land, island, sandbar, or portion of the riverbed which lies south of the low water mark on the present northerly shore, to which the State of Ohio claims title as against Kentucky, and the complaint presents no controversy over specific territory which this Court is asked to resolve and against which Kentucky may defend. The reference in the prayer of the complaint indicating that Plaintiff relies on charts 12 through 136 made by the Louisville District Engineer Office in 1911-1914 is not sufficient to inform Defendant of the specific areas in issue, since such charts do not show the present location of the low water

south line of 1896-1898, and a new survey must be made based on that date in order to re-establish the line and determine where it runs today. Plaintiff has the obligation to allege specifically the territory claimed by it and cannot place the burden on Defendant to find out which portion of its property is endangered. Since Plaintiff appears to be basing its case on the 1896-1898 low water mark line, it should be required to run a survey to re-establish such line and show which parts of the river it is claiming.

FOURTH DEFENSE

While the State of Ohio has concurrent jurisdiction with Kentucky over the Ohio River, this jurisdiction is not joint and equal and does not prevent Kentucky licensing statutes being enforced, without the concurrence of Ohio, on that part of the river lying within the territorial limits of Kentucky.

WHEREFORE, having answered, Defendant prays and moves that the Court:

1. Dismiss the complaint, or in the alternative require that it be made more specific as set out in Defendant's Third Defense;

2. Establish the boundary line between the State of Ohio and the Commonwealth of Kentucky as the low water mark on the present northerly shore of the Ohio River;

3. Decree that the "concurrent jurisdiction" on the Ohio River possessed by Plaintiff does not mean joint and equal jurisdiction over the entire river and does not prevent Kentucky licensing statutes being enforced on that part of the river within its boundary.

Defendant prays any further relief as may be granted by this Court.

ROBERT MATTHEWS
ATTORNEY GENERAL OF KENTUCKY

JOHN B. BROWNING
ASSISTANT ATTORNEY GENERAL

COUNSEL FOR THE COMMONWEALTH OF KENTUCKY

PROOF OF SERVICE

I, John B. Browning, Assistant Attorney General for the Commonwealth of Kentucky, and a member of the Bar of the Supreme Court of the United States, hereby certify that on August 10th, 1966, I served a copy of the foregoing Answer by depositing same in a United States Post Office with first class postage prepaid, addressed to the Governor and the Attorney General of the State of Ohio, at Columbus, Ohio.

John B. Browning
Assistant Attorney General